Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	
Capability to All Americans in a Reasonable	)	CC Docket No. 98-146
and Timely Fashion, and Possible Steps to	)	
Accelerate Such Deployment Pursuant to Section	)	
706 of the Telecommunications Act of 1996	)	

COMMENTS OF VERIZON ON THE THIRD NOTICE OF INQUIRY[1]

I. Introduction and Summary

Chairman Powell recently told Congress that one of the primary goals of the Commission is to "[f]acilitate the timely and efficient deployment of broadband infrastructure [and e]ndeavor to promote the growth of a wide variety of technologies that can compete with each other for the delivery of content and … strive not to favor — or uniquely burden — any particular one."[2] Present policies asymmetrically regulating the provision of broadband services only by telephone companies, which have a minority share of the broadband market and are new entrants in that marketplace, are inconsistent with that goal. Only by letting market forces regulate the broadband services of all competitors will the Chairman's goals, as well as the dictates of section 706 of the 1996 Act, be met.

---

[1] The Verizon telephone companies ("Verizon") are the local exchange carriers affiliated with Verizon Communications Inc. listed in Attachment A.

[2] Testimony of Michael K. Powell Before the Subcommittee on Commerce, Justice, State, and the Judiciary of the Committee on Appropriations United States House of Representatives on the Federal Communications Commission' Fiscal Year 2002 Budget Estimates, May 22 2001.

The Commission has repeatedly found that the broadband market is competitive, finding that "no group of firms or technology will likely be able to dominate the provision of broadband services."[3] And in this docket, it previously found that "preconditions for monopoly appear absent" in the broadband access market, and that "there are, or likely soon will be, a large number of actual participants and potential entrants."[4] These statements are even more true today.

Moreover, the telephone companies are relatively new entrants, holding a minority share of the market. Cable operators today have more than twice as many broadband subscribers than the telephone companies, and that lead is growing. And additional technologies – satellites and fixed wireless – have entered the marketplace and are expected to gain significant market shares in the months and years ahead.

Yet, with all these competing technologies, only the telephone companies, with a minority share, are subject to regulation that increases their cost, magnifies the risk of new investments, and denies them the flexibility to enter into innovative marketing and pricing arrangements to better serve consumers and to provide an opportunity to cover their investments. For example, both the costs and risks the telephone companies face are magnified to the extent they alone must unbundle their wholesale services and make piece-parts available to competitors at below-market prices. Likewise, both their flexibility to adopt innovative compensation regimes and their prospects for recovering the huge investments that are needed are severely handicapped by the fact that they must tariff and cost-justify their retail broadband rates and are

---

[3] *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 15 FCC Rcd 11857, ¶ 19 (2000) ("LMDS Order").

[4] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans,* 14 FCC Rcd 2398, ¶ 48 (1999) ("First Advanced Services Report").

subject to detailed accounting requirements, while their competitors are free to price to the market and to enter into innovative compensation arrangements, such as those that prevail in the cable and Internet businesses, without regulatory constraint. This asymmetric regulation harms not just the telephone companies, but the consuming public. It gives the telephone companies little incentive to expand their broadband offerings and to invest in new technology, such as fiber-based services, which have the potential to increase transmission speeds and reduce costs. This current asymmetric policy is, therefore, inconsistent with Congressional policy to facilitate advanced service (*i.e.*, broadband) deployment and with Commission policy as articulated by the Chairman.

Instead, the Commission should adopt here a firm policy that broadband services are competitive and need not be regulated regardless of the provider. In particular, it should take immediate steps to (1) eliminate one-sided regulatory burdens imposed on the wholesale provision of broadband services by the telephone companies to their competitors and (2) forbear from regulating retail provision of broadband services entirely. And it should do so without going through a lengthy proceeding to collect and analyze more data (which, in any event, are unavailable) that would only confirm what it has already decided – that the advanced services market is competitive and the telephone companies are the upstart competitors challenging the cable incumbents. Instead, the Commission can best meet its obligations under the Act by promptly refraining from regulation of the nascent broadband market.

II. The Broadband Services Market Is Diverse and Competitive.

There can be little doubt that there is a single market for broadband services which includes several competing technologies and a number of vendors. Nor can it reasonably be argued that this market is anything but competitive. In deciding to sunset the prohibition against

telephone companies and cable operators owning Local Multipoint Distribution Service spectrum in areas overlapping their service territories, the Commission was called upon to determine just this question – whether "the broadband market is robust and competitive."[5] Its answer was unequivocal. First, it made clear both that vendors offering several diverse technologies make up a single broadband market. And, second, it concluded that this market is "robust and competitive:" "The record before us, which shows a continuing increase in consumer broadband choices within and among the various delivery technologies — xDSL, cable modems, satellite, fixed wireless, and mobile wireless, suggests that no group of firms or technology will likely be able to dominate the provision of broadband services."[6] Likewise, in approving the AT&T-MediaOne merger, the Commission found that cable operators, despite a having a commanding share of the residential broadband market, face "significant actual and potential competition from . . . alternative broadband providers."[7]

These statements are consistent with prior Commission findings in the First Report in this docket, quoted above. Those findings led the Commission to conclude that it does "not foresee the consumer market for broadband becoming a sustained monopoly or duopoly."[8] Similarly, the Cable Services Bureau identified a "nascent residential broadband market containing a number of existing and potential competitors," with "[c]able, telephone, wireless, and satellite

---

[5] LMDS Order at ¶ 17.

[6] *Id.* at ¶ 19.

[7] *Applications for Consent to the Transfer of Control of MediaOne to AT&T*, 15 FCC Rcd 9816, ¶ 116 (2000) ("AT&T-MediaOne Order").

[8] First Advanced Services Report at ¶ 52.

companies . . . rushing to provide broadband services to the home."[9] The Bureau ultimately concluded that "competition" will give "consumers . . . a wide selection of broadband features, capabilities, and pricing from which to choose."[10]

The Commission has therefore made it clear, on numerous occasions, that it defines broadband as a single market that includes services offered by the telephone companies, cable companies, wireless operators, and satellite providers, each offering services using a different technology, and that it sees no evidence of a market failure facing customers seeking to purchase broadband access.

Like the telephone companies' digital subscriber line offerings, the incumbent cable companies' cable modem service offer broadband services that are primarily used for high-speed Internet access.[11] These services are available to any subscriber whose premises is passed with cable plant that has been upgraded to two-way capability. The transmission speeds of cable modem service are comparable to those offered by the telephone companies. Therefore, the cable providers and telephone companies compete head-to-head; but the cable companies have twice as many broadband subscribers.

Both the cable operators and the telephone companies, however, are already facing significant competition from wireless services, and this wireless competition will increase in the years ahead. Fixed wireless, for example, is rapidly emerging as a major broadband competitor.

---

[9] Deborah A. Lathen, *Broadband Today: A Staff Report to William E. Kennard on Industry Monitoring Sessions Convened by the Cable Services Bureau*, Report No. CS99-14 at 47 (Oct. 1999), ("Broadband Today").

[10] *Id.*

[11] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans*, *Second Report*, 15 FCC Rcd 20913, && 29-34 (2000) ("Second Advanced Services Report").

The Commission noted over a year ago that broadband fixed wireless services are being marketed to business customers and "this technology will be marketed to residential consumers in the near future."[12] It also pointed out that "[f]ixed wireless providers boast high-speed Internet connections at a fraction of the cost offered by local telephone companies."[13] Because of this, fixed wireless has promise to provide broadband services to business and residence customers "that are beyond the reach of wireline DSL,"[14] and is therefore well-suited to deployment in rural areas where low densities may make wireline technologies cost-prohibitive.

Surveys of ISPs show that they see wireless as a real alternative to wireline for broadband services. For example, CyberAtlas.Com reports that 40 percent of the ISPs surveyed by internet.com Corp. plan to offer fixed wireless broadband access in the future.[15] It also predicts that broadband wireless service revenues will climb to $6.3 billion by 2005, with a compound annual growth rate of almost 60%.[16]

Two-way satellite service is also being deployed and will become a significant broadband competitor. In the past few months, two companies have begun providing two-way broadband services which are no longer dependent on a telephone line for the uplink to the Internet.

---

[12] *Id*. at & 121.

[13] *Id*.

[14] *Id*. at & 110.

[15] Michael Pastore, *Fixed Wireless Remains Viable Broadband Option*, at http://cyberatlas.internet.com/markets/broadband/article/0,,10099_752461,00.html, April 25, 2001.

[16] *Id*.

DirecPC is available in the 48 contiguous states, and StarBand is also available in Alaska.[17] Both services offer speeds in the same range as DSL service. Because these are radio-based, no landline facilities are required, and the service is available to any customer that has a line of sight to the satellite. As a result, any business or residence almost anywhere in the country has access to broadband services. As with fixed wireless, satellites can provide broadband service in rural and low-density areas where the wireline services of cable companies and telephone companies may be uneconomic. Of the two, two-way broadband satellite service is generally available today to these customers and requires installation of only a small dish to receive service.

It is therefore readily apparent that the single broadband market is populated by several technologies and numerous providers, and that the level of competition will continue to increase.

III. Telephone Companies Are New Entrants For Broadband Services.

Telephone companies are by no means the dominant providers in the broadband market. Instead, they are the new entrants. The Commission has released data showing that cable operators serve nearly two-thirds of all residential and small business broadband customers, offering these customers high-speed local access bundled with the service of an affiliated Internet Service Provider ("ISP").[18] And cable operators are still enjoying an increasing share of

---

[17] *See* www.direcpc.com ("Experience 'always on' Internet Access with DirecPC two-way service anywhere in the contiguous U.S. with a clear view of the southern sky"); www.gilat2home.com/("StarBand service is available virtually everywhere in the continental United States and Alaska").

[18] Industry Analysis Division, Common Carrier Bureau, *High-Speed Services for Internet Access: Subscribership as of December 31, 2000*, at Table 3 (Aug. 2001) ("2001 Broadband Report"). In addition, the Precursor Group reported that 73 percent of residential broadband service was provided by cable modems in 2000. Scott C. Cleland, *How Broadband Deployment Skews Economic/Business Growth*, Precursor Group, at 1 (Feb. 22, 2001), *available at* www.imapdata.com/n_studies/news/precursor.pdf.

new broadband subscribers.[19] For example, in the second quarter of 2001, cable operators received 72% of new subscribers, compared to 26% for the local exchange companies' digital subscriber line services ("DSL").[20] The Commission has predicted that cable operators will continue to serve the majority of residential broadband customers at least until 2004, and industry analysts have suggested that this lead will last even longer.[21] And the Yankee Consulting Group, among others, expects the cable lead over DSL to continue to widen at least through 2005.[22]

Local telephone companies are among the newer entrants in the residential broadband access market, challenging the dominant market position held by cable operators, so far unsuccessfully. "DSL is a long shot to seize the lead now."[23] Significantly, independent observers pin that result on "archaic regulations that forced DSL players to adopt a wrong-headed structure from the get-go."[24] As a result, the Commission's own figures show that all DSL providers combined served little more than 30% of residential and small business

---

[19] Solomon Smith-Barney, *The Battle for the High-Speed Data Subscriber: Cable vs. DSL*, Aug. 20, 2001 at 1 ("SSB").

[20] *Id*.

[21] Second Advanced Services Report at & 189 ("Many analysts expect that over the next five years, cable modem subscriptions will continue to increase dramatically, reaching an average estimate of 15.2 million subscribers by year-end 2004"); *id.* at ¶ 191 ("Many analysts predict that, over the next five years, residential DSL subscription will grow to 13 million"). Some observers predict a wider disparity in cable and telephone company broadband residential subscribers by 2005. *See, e.g.,* SSB at Fig. 11 (23.3 million cable modem subscribers v. 13.4 million subscribers to the telephone companies' DSL services).

[22] Jonathan R. Laing, *Get Wired: Why Cable Will Beat the Bells in the Race to Wire Your Home*, Barrons (Aug. 20, 2001).

[23] *Technology: Highway to Hell*, Forbes, at 98 (Feb. 19, 2001) ("Forbes"), *available at* www.forbes.com/forbes/2001/0219/098.html.

[24] *Id*. at 99.

broadband access subscribers in 2000.[25] And cable continues to get the lion's share of new subscribers. As one commentator concludes, "Even if the FCC acts quickly [to deregulate the telephone companies' broadband services], it isn't clear that DSL, in such turmoil, can keep pace with cable."[26]

DSL, of course, is only one type of broadband that can be provided over the telephone network. As local networks are upgraded with fiber facilities moving closer to the home, more services, with greater bandwidth, will be available. The network to support these services is only now beginning to be deployed.

IV. The Telephone Companies' Broadband Services Are Highly Regulated; Cable Operators' Are Not.

The Commission has imposed a host of regulatory obligations on both the wholesale and retail provision of broadband services and network facilities of local telephone companies. These obligations increase costs and risks while limiting the flexibility to enter into innovative compensation arrangements and to recover the large investments that they need.

At the wholesale level, it has not only applied all of the section 251 obligations on some telephone companies, including unbundling and collocation, but it has gone beyond these to force them to unbundle the high-frequency spectrum of the local loop, allowing competitors to share the telephone companies' facilities solely for the purpose of providing competing DSL service, and, in certain circumstances, the Commission has even required the telephone

---

[25] 2001 Broadband Report at Table 3.

[26] Forbes at 100.

companies to unbundle new packet-switching equipment.[27] And the Commission has further increased the operational costs and complexities – and magnified the risk – incurred by telephone companies to the extent it requires them to provide for collocation in their facilities outside of central offices, such as at remote terminals. Likewise, it has also forced the telephone companies to make expensive changes to their networks and install operations support capabilities that would otherwise be unnecessary in order to accommodate competitors' access to the piece-parts.

Section 251 obligations, however, are designed to promote competition for services where the telephone companies have market power, such as exchange service and exchange access. Congress never intended those obligations to apply to markets that are already competitive, or to newly-emerging services and technologies where the telephone companies have no market power.[28] Nor can imposing these obligations only on the telephone companies be squared with the terms of the 1996 Act, because other providers could not possibly be impaired in any competitively meaningful sense absent the ability to use telephone company networks to provide services that the Commission has concluded are already competitive.

The Commission has also subjected the telephone companies' retail broadband service to the full panoply of Title II regulatory requirements. For example, the telephone companies must offer broadband services under tariff and are subject to Commission scrutiny to determine if the

---

[27] *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 20912, ¶ 48 (1999) ("Advanced Services Order") ("a competitor is still impaired if it must provide analog voice service in order to enter the market for voice-compatible xDSL services").

[28] As the Conference Report on the 1996 Act makes clear, section 251 and subsequent sections were inserted into the Act "to create competitive communications markets." Conf. Rep. 104-458, 104th Cong., 2d Sess. at CR-117.

rates, terms and conditions for broadband service are just, reasonable, and non-discriminatory.[29] This denies them the ability to enter into innovative compensation arrangements such as those that prevail in the cable business and on the Internet, and it severely constrains their ability to develop alternative revenue sources sufficient to justify the massive investments that are needed. Likewise, by extending rules designed for the narrowband world to broadband, the telephone companies alone would be subject to costly unbundling and other requirements under the Commission's Computer Inquiry III rules.

By contrast, the Commission has left cable operators and others free from all regulation related to their provision of broadband services. Cable modem service providers and others may offer their services to whomever they want, at whatever price they choose to charge, and may enter into innovative pricing arrangements that provide alternative sources of revenues to pay for their broadband investments. They are under no obligation to unbundle their Internet transport (between the end user and the ISP) and provide it on a wholesale basis, and they have not been required to share any of their broadband network facilities with competitors. The Commission has thus permitted cable operators to capture the full value of their broadband networks in order to recover the costs of the investments needed to provide advanced services. The Commission consciously chose to grant cable operators this freedom because it concluded that consumers have a free and competitive choice "among various alternative broadband access providers."[30]

---

[29] *GTE Telephone Operating Companies*, 13 FCC Rcd 22466, ¶ 32 (1998) ("We have ample authority under the Act to conduct an investigation to determine whether rates for DSL services are just and reasonable"); *see also Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Second Report and Order, 14 FCC Rcd 19237, ¶ 21 (1999) ("Advanced Services Order").

[30] AT&T-MediaOne Order at ¶ 116.

This is certainly true of the telephone companies' broadband services as well and warrant similar regulatory treatment.

V. Regulation of the Telephone Companies' Broadband Services Inhibits Competition.

The Commission's mandate under section 706(a) of the 1996 Act is to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." In the Notice here, the Commission expresses concern that "the pace of investment in the deployment of advanced services may have slowed in recent months."[31] It asks how it should encourage increased deployment of such services and remove barriers to investment.[32] The answer to that key question is very simple – the Commission can encourage telecommunications providers to accelerate investment and deployment of advanced services by allowing the competitive marketplace to operate free of current regulation that increases both the costs and risks of providing advanced broadband services. In particular, given the competitiveness of the broadband market and the telephone companies' minority share of that market, there is no reasonable argument for continuing to regulate their broadband services and only their services. So long as the telephone companies' broadband offerings remain regulated while those of the cable operators, who supply the predominant share of broadband services, are not, the telephone companies will be hampered in their efforts to compete with cable and other broadband providers. Achieving parity by regulating the cable companies will not increase the

---

[31] *Third Notice of Inquiry*, FCC 01-223, & 23 (rel. Aug. 10, 2001) ("Third NOI"). Recent press reports indicate that broadband deployment may in fact be slowing. *See, e.g.* Christopher Stern, "Broadband Market Growth Slows," Washington Post, Aug. 28, 2001 at E01; Jessica Hall, "Road to Nowhere: DSL Growth Running on Empty," Reuters, Aug. 27, 2001.

[32] Third NOI at & 26.

incentives to deploy new broadband services. Instead, the Commission must free the telephone companies to compete on an equal footing.

Unabated current regulation will impede the deployment of more widespread and more advanced fiber-based broadband services. As an initial matter, the telephone companies are required to bear heavy costs of regulatory compliance from which cable operators are completely free. As the Cable Services Bureau recognized, the rules required to enforce "Title II 'non-discriminatory' interconnection and access requirements" against telephone companies are "burdensome."[33] Given the Commission's conclusion that the broadband access market is competitive, maintaining such a regulatory disparity would surely adversely affect consumers.

By forcing the telephone companies to bear costs from which cable operators and others are free, the Commission's regulatory disparity will hinder their ability to deploy existing or new services. Because the Commission's disparate regulatory requirements increase the costs faced by telephone companies offering broadband services while, at the same time, reducing their revenues relative to cable operators, the telephone companies' broadband services are necessarily less competitive than they otherwise would be against cable-delivered broadband access. In addition, the effect of these policies will be felt with particular force in "sparsely populated and remote locations" where DSL network upgrade costs are already high due to problems in "legacy outside plant conditions."[34]

---

[33] Broadband Today at 44.

[34] Second Advanced Services Report at ¶¶ 31, 38.

Economic wisdom teaches that "[n]ew products and services are a major source of increases in the economic welfare of consumers over time."[35] The rapid growth of Internet services has no doubt resulted in significant increases in consumer welfare, and increased broadband deployment will accelerate those increases. For example, Jackson and Crandall have estimated that universal broadband deployment could produce as much as $520 billion per year in consumer benefits.[36] Given the Commission's conclusions that the provision of broadband Internet access is competitive, regulation of the telephone companies' retail broadband services will slow or eliminate the investment needed to ensure such universal deployment. As Professor Alfred Kahn has pointed out, "[i]t would distort competition and anti-competitively handicap the incumbents if their *retail* operations were to be subjected to asymmetrical constraints and obligations to competitors."[37] In addition, tying the rates of new, competitive service to costs "would fatally attenuate the incentives of incumbents to develop new and innovative services."[38]

Regulation of the wholesale provision of competitive services will likewise provide a disincentive to network investment. As Dr. Crandall previously told the Commission, "as long as the incumbent knows that it must lease its facilities at forward-looking economic cost, its

---

[35] Declaration of Kenneth J. Arrow, Gary S. Becker and Dennis W. Carlton at & 32, appended to Comments of Verizon Communications, Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Gen. Docket No. 00-195 (filed Dec. 1, 2000) ("Arrow, Becker and Carlton").

[36] Robert W. Crandall and Charles L. Jackson, The $500 Billion Opportunity: The Potential Economic Benefit of Widespread Diffusion of Broadband Internet Access (July 16, 2001) ("Crandall/Jackson").

[37] Alfred E. Kahn, *Letting Go: Deregulating the Process of Deregulation* at 58 (1998).

[38] *Id*. at 102.

incentive to invest in network upgrades or expansions is severely attenuated."[39] Or, as Professor Kahn put it,

> mandatory sharing of essential facilities should as a general rule be limited to situations in which the monopoly enjoyed by the ILEC is essentially a carryover from its past as a franchised utility company. When, in contrast, the facilities or inputs in question are new and are expected to be provided, not under a system of cost-plus rate base/rate of return regulation, but at the risk of investors, the potential losses in dynamic efficiency in deploying new technologies and bringing new services to the market will typically outweigh any benefits in cost savings from mandatory sharing.[40]

And as the chairman of the country's largest cable operator – Michael Armstrong from AT&T – has bluntly stated, "If those companies [ISPs wanting mandated access to use AT&T's network] want to move up into broadband, terrific. But getting a free ride on someone else's investment and risk is not the way to do it."[41]

In its reluctance to impose "open access" conditions on providers of cable modem services, the Commission recognized that, when competition prevails, it, not regulation, should determine which technologies and services succeed in the marketplace.[42] It has not yet, however, applied this same logic with respect to broadband services provided by local telephone companies, which have no ability to exercise market power.

---

[39] Declaration of Robert W. Crandall at & 13, appended to Reply Comments of Bell Atlantic in the UNE Remand Proceeding, (filed June 10, 1999).

[40] Declaration of Alfred E. Kahn In Response To Second Further Notice of Proposed Rulemaking at &44, appended to Comments of Bell Atlantic in the UNE Remand Proceeding, (filed May 26, 1999) (intermediate footnote omitted).

[41] Michael Armstrong, AT&T Chairman, Speech before the Washington, D.C. Metropolitan Economic Club (Nov. 2, 1998).

[42] *See* J. Oxman, "The FCC and the Unregulation of the Internet," Office of Plans and Policy, Federal Communications Commission, OPP Working Paper No. 31 (July 1999), *available at* www.fcc.gov/opp/workingp.html ("Oxman").

Yet, as Professors Arrow, Becker and Carlton have shown, the imposition of common carrier and line sharing rules relating to broadband services on phone companies "can have significant adverse consequences on competition and consumers." Below-market pricing obligations "discourage ILECs from deploying their own broadband facilities even if they are more efficient providers of broadband services…. Imposition of these regulations on phone companies under competitive circumstances also reduces their incentives to invest in research and development that may extend the range at which [broadband] services can be effectively provided."[43]

Delays in introducing new technologies and services resulting from regulatory policies have in the past cost tens of billions of dollars in consumer welfare. Professor Hausman has estimated, as one example, that the seven- to ten-year delay in the introduction of cellular telephone services in the United States resulted in a loss in consumer welfare of between $16.7 and $49.8 billion per year.[44] Likewise, he calculated the losses in consumer welfare from the five- to seven-year delay in introduction of voice messaging services caused by regulatory policies requiring structural separation at $1.0 to $1.3 billion per year.[45] With the Internet economy already having generated an estimated $300 billion in revenue in 1998 and $800 billion in revenue in 2000, delays in new broadband technologies could cause losses in consumer

---

[43] Arrow, Becker and Carlton at & 33.

[44] Jerry Hausman, *Valuing the Effect of Regulation on New Services in Telecommunications*, Brookings Papers: Microeconomics 1997, pp.14-15.

[45] *Id*. at 15.

welfare that dwarf the cellular and voice messaging figures, as Jackson and Crandall have shown.[46]

Moreover, the benefits of eliminating unnecessary regulations are not merely hypothetical. Prior experience with the wireless industry provides concrete marketplace evidence of the magnitude of the benefits that will flow from deregulating advanced broadband services. At the end of 1988, five years after commercial cellular service began, and before the industry was deregulated, there were approximately two million cellular subscribers in the U.S. and the average monthly bill was over $98.[47] Within four years of the Commission's initial steps at deregulation,[48] cellular subscribership reached 11 million, while the subscriber's average monthly bill had dropped by nearly 30 percent.[49]

In the Omnibus Budget Reconciliation Act of 1993,[50] Congress largely deregulated the cellular telephone industry. From 1993 to 1998, wireless telephone subscribership rose from 16 million to 69 million, while the average monthly bill dropped nearly 50 percent.[51] Today, there are more than 100 million mobile customers in this country, paying as little as $15 per month for basic

---

[46] *See* Crandall/Jackson (who estimate annual losses of up to $520 billion is broadband if is not universally available). For the 1998 figure, *see* Oxman at 3; the 2000 estimate is from Cisco Systems and University of Texas, *Measuring the Internet Economy* at 1 (Jan. 2001), *available at* www.internetindicators.com.

[47] CTIA Semi-Annual Wireless Industry Survey Results.

[48] Amendment of Parts 2 and 22 of the Commission's Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service, Report and Order, 3 FCC Rcd. 7033 (1988), recon. in part 5 FCC Rcd 1138 (1990).

[49] CTIA Semi-Annual Wireless Industry Survey Results.

[50] Omnibus Budget Reconciliation Act of 1993, Public Law 103-66.

[51] CTIA Semi-Annual Wireless Industry Survey Results.

service. Wireless long distance service has become so inexpensive that about 40% of mobile phone users make long distance calls on their cellular phone while they are home.

The inescapable conclusion is that the cellular industry benefited greatly from deregulation. In a deregulated environment, subscribership rose and prices dropped. The same result can be expected in the broadband advanced services industry.

VI. The Commission Should Adopt a Competitive Broadband Policy Free of Asymmetrical Regulation.

Consistent with its obligation under section 706 of the 1996 Act, the Commission should take immediate steps to give all providers the incentives they need to continue to deploy broadband services universally and to invest in new broadband technologies. At the outset, in this proceeding, the Commission should find that broadband services are competitive, that the telephone companies are among the new entrants, and that cable companies have the lion's share of the market. Based on these findings, it should declare that its mandate under section 706 can best be accomplished by allowing all providers to offer such services free of regulatory constraints. From this, it should conclude that regulations designed to promote competition are unnecessary in a market that is already competitive, and that price and other constraints will serve only to deprive the public of products, services, and new technologies.

In particular, the Commission should promptly move to eliminate the current asymmetric regulation of the telephone companies' broadband services, as follows:

First, the Commission should propose to revamp the wholesale regulation of the telephone companies' broadband services. As shown above, the section 251 regime was designed as a transition from a monopoly world to a world in which there was facilities-based competition. Properly implemented, it can help hasten competition in the local voice telephony

marketplace. Broadband is already at the point that section 251 was intended to promote — there is no monopoly provider, and there are multiple facilities-based providers that serve every segment of the market. Under these circumstances, it makes no sense from either a legal or a policy perspective to impose one-sided unbundling requirements on telephone company-provided broadband services or to subject those services to investment-deterring TELRIC pricing schemes.

Moreover, the Commission cannot rationally maintain this regulatory regime at the same time that it declines to impose similar obligations on the dominant providers in this market. If cable operators do not control a bottleneck broadband access facility, as the Commission has found, then the telephone companies, with half the broadband subscriber lines, surely do not control such a facility either.

But there are other good reasons to eliminate these requirements. The existing rules make it operationally harder, more risky, and more costly for an incumbent to upgrade its network by adding fiber. If an incumbent deploys fiber as far as the remote terminal, it may still be required to

- maintain a parallel copper network,
- find a way to provide unbundled access at the remote terminal,
- create a new broadband channel back to the central office and
- create new operations support systems to track and manage these new arrangements.

Faced with these additional burdens, an incumbent necessarily will think twice about such deployment.

To remove the competitive disparity between the telephone companies and other providers and to eliminate rules that actually hinder the deployment of broadband services, the

Commission should reevaluate the UNEs it requires the telephone companies to provide to carriers for their provision of local broadband services.[52] It can accomplish this under the terms of the Act by recognizing that in the already competitive broadband marketplace, other providers simply cannot be impaired in any competitively meaningful sense absent access to unbundled elements of the telephone companies' networks. *See* 47 U.S.C. ə 251(d)(2).

Second, the Commission should forbear from all price regulation of retail broadband services. This would include not just eliminating the requirement to file tariffs but also indirect regulation – such as imputing revenues from or allocating costs to broadband services. In addition, the Commission should decline to extend to such services the Computer Inquiry III rules to broadband services and forbear from applying sections 201, 202, and other similar requirements designed for the narrowband world. In short, the Commission should allow the competitive marketplace to regulate the broadband services of the telephone companies, just as it does at present for those of cable companies, satellite companies, and fixed wireless operators.

There can be little question that the requirements of the Act for forbearance are met here. Under the Act, the Commission must forbear when the requirements of section 10(a) of the Act are satisfied:

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.

---

[52] There would be no change in the UNEs a carrier providing voice service could obtain.

47 U.S.C. э 160(a).

To determine whether forbearance is appropriate for telephone company broadband services, the Commission really need resolve only a single question: Do the telephone companies control a bottleneck facility? If the answer is no, then the market can be trusted to ensure that their charges, practices and classifications are reasonable and to guarantee that consumers remain free to choose among providers. In such a circumstance, forbearance would be decidedly "in the public interest" because it would eliminate the costs of regulatory compliance and would permit the telephone companies the flexibility to respond quickly to marketplace requirements. And, as shown above, the Commission has repeatedly concluded that there is no bottleneck and the market is fully competitive.

More specifically, forbearance here meets the standards for forbearance the Commission has previously established. First, the Commission has held in granting a petition under section 10, "[w]e find that competition is the most effective means of ensuring that the charges, practices, classifications, and regulations with respect to [a telecommunications service] are just and reasonable, and not unjustly or unreasonably discriminatory."[53] Competition is robust in this market, and there is nothing to suggest that a telephone company with its share of the market could charge unjust or unreasonable prices or engage in unjust or unreasonable practices.

Second, for the same reason, common carrier regulation is not "necessary for the protection of consumers." Instead, the opposite is true – consumers are best protected by allowing the marketplace to provide them with a robust choice of services from a variety of competing providers. Enforcement of the pricing provisions of Title II is not necessary to

---

[53] *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, 14 FCC Rcd 16252, ¶ 31 (1999).

constrain the prices that the telephone companies charge for broadband services — competing providers provide that constraint. This competitive marketplace is more than adequate to protect consumers.

Moreover, in applying section 10(a)(2), the Commission has noted that "the fundamental objective of the 1996 Act is to bring consumers of telecommunications services in all markets the full benefits of competition."[54] The record shows that current regulation stifles rather than stimulates investment in advanced services, the exact opposite of the situation that protects consumers.

Third, in determining whether forbearance is "in the public interest" under section 10(a)(3), the Commission must "consider several factors, including benefits to consumers and whether forbearance will promote competitive market conditions."[55] The evidence shows that imposition of Title II pricing regulation on one competitor while leaving the rest free of regulation skews, rather than promotes, competition. In granting other petitions, the Commission has relied upon the fact that forbearance would make the petitioner "a more effective competitor" to satisfy the public interest test of section 10.[56] Verizon has shown that regulation adds costs to its services, and the Commission has found that the avoidance of unnecessary cost is also in the public interest.[57]

---

54 *Id.* at ¶ 46.

55 *Id*. at ¶ 48.

56 *Id*. at ¶ 49.

57 *See id*.

There can be no dispute as to the condition of this market. This competitive marketplace is more than sufficient to protect consumers, making continued regulation unnecessary. Under these circumstances, the Commission is required to propose to forbear.

VII. The Competitive Marketplace Will Ensure That All Americans Receive Access to Broadband Services With No Need For Regulatory Mandates.

The Commission asks whether "advanced telecommunications capability" is available to all Americans.[58] In particular, it asks for data on access to such services by elementary and secondary schools, persons with disabilities, rural health care facilities, low-income consumers, consumers in sparsely populated areas and in inner cities, minority consumers, consumers living on tribal lands, and consumers living in the U.S. territories.[59] While Verizon has no data on availability of broadband services at this level of granularity, those data should not be needed. Instead, consumer demand can best be served if Commission steps aside and allows this nascent competitive market to develop free of regulatory constraints.

On the other hand, if the telephone companies continue to be faced with the existing asymmetrical regulatory constraints, they will have little incentive to expand their broadband deployment into additional areas, as the Commission found in an earlier phase of this proceeding.[60] Therefore, the Commission can best insure widespread broadband availability by

---

[58] Third NOI at & 19.

[59] *Id*. at & 21-22.

[60] *See* Second Advanced Services Report at && 31, 38 (the telephone companies need incentives to deploy broadband services in "sparsely populated and remote locations" where DSL network upgrade costs are already high because of existing outside plant conditions).

adopting the deregulatory policies and rules proposed above.[61]

VIII. Conclusion

Accordingly, the Commission should adopt the policies proposed above and should immediately initiate a rulemaking to deregulate the telephone companies' provision of broadband services.

Respectfully submitted,

Michael E. Glover
Edward Shakin
Of Counsel

Lawrence W. Katz
1515 North Court House Road
Suite 500
Arlington, Virginia 22201-2909
(703) 351-3071

Attorney for the Verizon
telephone companies

September 24, 2001

[61] The telephone companies' broadband services are accessible to persons with disabilities. Because those services are principally used today for Internet access, the usability of these services by such individuals is primarily a function of the capabilities of the ISP and the equipment and software deployed on the customer's premises.

ATTACHMENT A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.